

23 February 1971

MEMORANDUM FOR THE RECORD

SUBJECT: A Bill "To Amend Title 5, United States Code to Establish and Govern the Federal Executive Service and for Other Purposes"

1. The Administration has submitted to Congress a draft bill establishing a Federal Executive Service for super grades GS-16 through GS-18. The bill has not yet been formally introduced and is not numbered; however, a copy of the bill in an Administration package, which included a section analysis and a background discussion, were secured from House Post Office Committee. A review of this material reflects the following.

2. Super grades GS-16 through GS-18 as part of the present competitive system are abolished. A contractual program on a three-year renewable basis without regard to specified positions is established. The CSC is made sole authority to oversee and direct the program which provides appeal mechanisms for aggrieved employees to the CSC. The rather unique and perhaps most noteworthy feature is the extension of the program to those agencies within the Executive which are not now under the competitive service; and clearly outside of the Executive to the Judicial and Legislative. In regard to Judicial and Legislative, a program must be established which is as nearly like the program prescribed for the Federal Executive Service as conditions "of good administration warrant." This should be borne in mind when considering the scope of implementation within Government which the administration contemplates.

3. In Section 3132 certain listed agencies are exempt including CIA, AEC, and the FBI. However, these agencies, under Section 3143 (d) are "...encouraged to adopt such features of the program...as conditions

of good administration warrant;" and are "entitled, on request to receive advice and assistance from the Civil Service Commission...."

4. The Administration presumes such a broad adoption of the FES program, either mandatorily under the bill or by election and adoption of similar programs by agencies otherwise exempt, that the present laws in Title 5 are amended or repealed. This includes the following significant changes:

a. Sections 5304, 5332, 5361, 5362, 5363 - Pay Rates and Systems - Amended to strike GS grades 16 through 18 including 5332, The General Schedule.

b. Sections 5102, 5104, 5108, 5109, 5114 - Classification Act - Amended to strike all reference to GS grades 16 through 18.

5. Section 3139 of the bill provides a formula for the pay of FES executives which is not to be less than the sixth step of a GS-15 or more than level V. The average rate, however, of all executives may not exceed the executive pay average authorized by the Civil Service Commission in collaboration with the Office of Management and Budget. Under Section 3134, the total number of FES executives must be negotiated with and approved by the CSC and OMB. Section 2(b)(3)(A) sets forth the present annual salaries of super grades 16 through 18 which is the grade schedule to be used for those employees in positions which are not brought under the FES. Section 3(a)(1) provides that each position paid at a rate of GS 16, 17, or 18, or if pay was fixed by administrative action in these grades, is authorized to be paid under Section 2(b) above. This is to constitute "...the only authority for continuing a position... (and) all authorities for those positions that existed immediately before the effective date of this Act are repealed...."

6. The effectiveness of the exemption granted to CIA at this point becomes somewhat confusing. As previously mentioned, Section 3132 of the bill granted the FBI an exclusion together with CIA and AEC. Section 2 of the bill is described by the CSC as a transition section which would be the enabling authority for super grades outside of the FES. All employees, including excepted service, are covered. Herein, however, Section 2(b)(2)(B) grants FBI a special authority to fix the pay of 140 positions by administrative

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determination without regard to any other provisions of the Act. This would make the FBI the only Agency of Government acting under such specific authority since all existing authority in present Section 5108 of Title 5 would be repealed. This would also constitute an increase for the FBI of 30 positions from the present 110 positions under Section 5108. The background of this entry is not known; however, it is clear that the FBI has determined to remain outside FES. The FBI is also expressly exempt under Section 3 (a)(2) which repealed all prior authorities for grades 16 through 18 and requires that "Each agency in the Executive, Judicial, or Legislative branch shall make a report to the Civil Service Commission at such time and in such form as the Commission prescribes," concerning each position which has not been brought into the Federal Executive Service or a similar program. This must include a statement of the authority that existed for each such position immediately before the effective date of enactment of the proposed bill. By construction, it is apparent that the exemption of the CIA does not avoid the reporting requirement of Section 3 (b). This is contrary to Section 6 of the CIA Act of 1949 which exempts the Agency from the provision of any other law which requires the publication or disclosure of the organization, functions, titles, salaries, or numbers of personnel employed.

7. The exemption of CIA in Section 3132 does not, it is felt, constitute an absolute exclusion from the application of the bill. The intent of the drafters was to eventually have all agencies included in the FES or a similar program. The apparent exception is the FBI, which is the only agency granted a special allocation of super grade positions and is effectively exempted. The same reasons that exclude the CIA from the competitive career service would exclude it from the FES. Since the exemption in the present bill is ambiguous and, in effect, merely grants a latitude to adopt a similar program, there should be a clear statement which would grant CIA a blanket exemption. CIA is expressly exempted from the Classification Act of 1949. The authority of the Director to establish positions and rates of pay is Section 8 of the CIA Act of 1949. This can continue to authorize a super grade structure.

8. The only possible consideration would be the effect of complete CIA exclusion from the FES program since the Agency does model as much as possible its positions and classifications after the Classification


Act and career civil service. The authority seems clear for the Director to establish a similar program internally if there is adoption of the FES program throughout Government, and it is highly effective for senior management. Such a program would, however, be structured within CIA limitations and be clearly outside of the FES itself in all respects.

STATINTL


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A BILL

To amend title 5, United States Code, to establish and govern
the Federal Executive Service, and for other purposes

Be it enacted by the Senate and House of Representatives of the United
States of America in Congress assembled, That title 5, United States Code,
is amended as follows:

(1) Section 1305 is amended by inserting "3143(c)," immediately after
"3105,".

Annual Reports
(2) Section 1308 is amended by inserting the following new subsection
after subsection (e):

"(f)(1) The Commission shall make an annual stewardship report to
Congress on the Federal Executive Service. The stewardship report shall be
submitted before April 1 of each year and shall include comprehensive
information for each agency in which members of the Federal Executive Service
are serving and for the Government-wide operation of the Service showing --

"(A) the current authorized number of appointments in the Federal
Executive Service and the projected number of executive appointments to
be authorized in the next fiscal year;

"(B) the current authorized ratios of career to noncareer
appointments in the Federal Executive Service and the projected ratios
to be authorized in the next fiscal year;

"(C) any adjustment in the number of executive appointments or the
ratios made under section 3134(e) of this title with the reasons therefor;
and

"(D) the current executive pay average established under section
3139(c) of this title, any exceptions to the executive pay average

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approved by the Commission under section 3139(b) of this title with the reasons therefor, and the projected executive pay average to be authorized for the next fiscal year.

In addition, the stewardship report shall include such other information on the overall program for the management of the Federal Executive Service as will enable Congress to maintain an adequate oversight of the Federal Executive Service.

"(2) The projected number of executive appointments, the projected ratios of career to noncareer appointments, and the projected executive pay average reported under paragraph (1) of this subsection are effective 90 calendar days after the submission of the stewardship report."

(3) Chapter 31 is amended--

(A) By amending the chapter analysis to read as follows:

"Chapter 31 - Authority For Employment

"Subchapter I - Employment Authorities

"Sec.

"3101. General authority to employ.

"3102. Employment of readers for blind employees.

"3103. Employment at seat of Government only for services rendered.

* "3104. [Repealed.] *Employment of specially qualified scientific personnel*

"3105. Appointment of hearing examiners.

"3106. Employment of attorneys; restrictions.

"3107. Employment of publicity experts; restrictions.

"3108. Employment of detective agencies; restrictions.

"3109. Employment of experts and consultants; temporary or intermittent.

"3110. Employment of relatives; restrictions.

"Subchapter II - The Federal Executive Service

"3131. Purpose.

"3132. Definitions.

"3133. The Federal Executive Service.

"3134. Authorization of executive appointments and ratios.

"3135. General authority to appoint executives; characteristics of
career and noncareer appointments.

"3136. Career appointments.

"3137. Employment agreements.

"3138. Qualifications Boards.

"3139. Pay.

"3140. Continued employment guarantees; separation benefits.

"3141. Report to Congress.

"3142. Regulations.

"3143. Executive management outside the Federal Executive Service."

(B) By inserting the following immediately before section 3101:

"Subchapter I - Employment Authorities".

✓ (C) By striking out section 3104. - *scientific professional personnel*

(D) By amending section 3109 by striking out "5332" and
Considered inserting "3139" in place thereof.

(E) By inserting the following new subchapter immediately
after section 3110:

"Subchapter II - The Federal Executive Service.

"§ 3131. Purpose

"It is the purpose of this subchapter to establish and provide for the
administration of the Federal Executive Service. The Federal Executive

Service is established to ensure that executive leadership is of the highest quality and is responsive to the needs, policies, and goals of the Nation it serves. The Federal Executive Service shall be administered to accomplish the following purposes--

"(1) to attract, recruit, and provide for the selection of the best executive talent available with assurances of prestige and recognition to encourage continuity of service;

"(2) to authorize each agency head to fix the pay and duty assignments of the executives in his agency as will best advance the program responsibilities of that agency;

"(3) to train, develop the careers of, and motivate the members of the Federal Executive Service so as to maintain the high degree of qualification essential for executive leadership;

"(4) to make effective a separate merit system for career executives with practices and procedures which, while interrelated with the regular competitive service, are expressly attuned to the development and utilization of executive leadership;

"(5) to ensure the continuous quality of executive service essential to carry out the policies of Congress, the President, and the heads of agencies, by open and public review of the qualifications of each career executive and the periodic reevaluation of his qualifications for retention in the Federal Executive Service; and

"(6) to recognize the need for a limited number of noncareer executives whose selection and retention by an agency head or key

political official is based on political agreement, program philosophy, or personal confidence, or whose tenure is of a noncareer nature.

"§ 3132. Definitions

"For the purpose of this subchapter, except section 3143--

"(1) 'agency' means --

"(A) an Executive agency; and

"(B) a military department;

but does not include --

"(i) the General Accounting Office;

"(ii) the Peace Corps;

"(iii) the Atomic Energy Commission;

"(iv) the Central Intelligence Agency;

"(v) the Tennessee Valley Authority;

"(vi) the National Science Foundation;

"(vii) the Council of Economic Advisors;

"(viii) the Federal Deposit Insurance Corporation;

"(ix) the Federal Reserve System;

"(x) the United States Postal Service;

"(xi) the Panama Canal Company;

"(xii) the Canal Zone Government;

"(xiii) the Office of the Comptroller of the Currency or the

Office of the Assistant Secretary (International Affairs),

Department of the Treasury; or

"(xiv) the Federal Bureau of Investigation, Department of Justice; and

"(2) 'executive' means an employee of an agency whose pay is fixed under section 3139 of this title and not under the General Schedule in section ~~5532~~(a) of this title nor under the Executive Schedule in subchapter II of chapter 53 of this title, but does not include --

"(A) a United States Attorney or Assistant United States Attorney in the Department of Justice;

"(B) an employee paid from--

"(i) appropriations for the Executive Office of the President under the heading 'Special Projects'; or

"(ii) funds appropriated to the President under the heading 'Emergency Fund for the President' by the Treasury, Post Office, and Executive Office Appropriation Act, 1971, or a later statute making appropriations for the same purpose;

"(C) a Foreign Service information officer in the United States Information Agency;

"(D) a hearing examiner appointed under section 3105 of this title;

"(E) an employee in the Foreign Service of the United States paid under chapter 41 of title 22;

"(F) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, paid under chapter 73 of title 38;

"(G) an expert or consultant employed temporarily or intermittently under section 3109 of this title; or

"(H) such other employee or group of employees as may be excluded by regulations of the President in the interest of national

security or foreign relations, or on the basis of a finding that the duties of the employee or group involve the performance of unique functions not readily adaptable to the purposes of this subchapter. ✓

"§ 3133. The Federal Executive Service

"The Federal Executive Service consists of the executives the Civil Service Commission authorizes agencies to appoint under section 3134 of this title. The executives the Commission authorizes agencies to appoint under section 3134 are members of the Federal Executive Service.

"§ 3134. Authorization of executive appointments and ratios

"(a) Each agency shall examine its executive manpower needs and submit to the Civil Service Commission, in accordance with regulations prescribed by the Office of Management and Budget and the Civil Service Commission, a written request for authority to appoint a specific number of executives in the agency. A request shall be based on the following factors:

- (1) the current level of budget and program activity in the agency;
- (2) the current level of executive staffing in the agency;
- (3) the anticipated agency program activity and agency budget requests;
- (4) pending legislation;
- (5) the level of work to be done in the agency; and
- (6) such other factors as may be prescribed from time to time by the

Office of Management and Budget and the Civil Service Commission.

"(b) The request required by subsection (a) of this section shall state the number of executives requested which the agency desires to appoint by career appointments and by noncareer appointments. Within the entire Federal Executive Service there is a ratio of not less than 75 career executives to not more than 25 noncareer executives. However, within a single agency, and subject to the

Government-wide restrictions, the Commission may authorize a ratio of career to noncareer executives as is most appropriate to the needs of the agency.

"(c) The request required by subsection (a) of this section shall be submitted annually at such time and in such form as the Commission prescribes.

"(d) The Commission, after collaboration with the Office of Management and Budget in review of the request of each agency and subject to sections 1308(f) and 3141 of this title, shall authorize--

"(1) the appointment of a specific number of executives in the agency; and

"(2) a specific ratio of career executives to noncareer executives in the agency.

"(e) The number of executive appointments and the ratios authorized under subsection (d) of this section may be adjusted by the Commission after collaboration with the Office of Management and Budget during the fiscal year in which they are effective only for emergency purposes that were not anticipated when they were authorized. An adjustment in the number of executive appointments under this subsection may not enlarge the Federal Executive Service by more than 1 percent in a fiscal year. If an adjustment is made under this subsection, the Commission shall include information concerning the adjustment in the next annual stewardship report required under section 1308(f)(1) of this title.

"§ 3135. General authority to appoint executives; characteristics of career and noncareer appointments

"(a) Within the ratio established by the Civil Service Commission for his agency, the head of an agency may appoint an executive by either a career or a noncareer appointment. The decision as to whether an appointment will be career

or noncareer is exclusively that of the head of the agency based on the following considerations:

"(1) A career appointment is made on the basis of merit and fitness under section 3136 of this title and is appropriate for the executive whose tenure is fixed and whose future service is Government oriented.

"(2) A noncareer appointment is (A) made on the basis of political agreement, program philosophy, or personal confidence, or (B) made for project service that does not entail a long-term career commitment.

"(b) An executive given a career appointment under section 3136 of this title does not serve a probationary or trial period. An executive given a career appointment--

"(1) is in the competitive service;

"(2) acquires a competitive status by that appointment; and

"(3) if he is a preference eligible as defined by section 2108(3) of this title, is entitled to the benefits of subchapter II of chapter 75 and section 7701 of this title without the completion of a probationary or trial period.

"(c) An executive given a noncareer appointment does not serve under an employment agreement and the head of the agency has exclusive authority to determine his qualifications for the noncareer appointment. An executive given a noncareer appointment--

"(1) is not in the competitive service;

"(2) does not acquire a competitive status by that appointment;

"(3) does not have a fixed tenure; and

"(4) serves at the will of the appointing authority without a continued employment guarantee.

"§ 3136. Career appointments

"(a) Each agency shall recruit and select candidates for career appointments in the Federal Executive Service on the basis of merit, capacity, and fitness. The Civil Service Commission shall assist each agency in recruiting and selecting candidates for career appointments to ensure--

"(1) that quality candidates having the best talent available are considered; and

"(2) that recruitment is carried out on as broad a base as is reasonable and, as nearly as conditions of good administration warrant, extends to qualified individuals both within and outside the civil service as defined by section 2101(1) of this title.

"(b) When an agency selects a candidate for career appointment, the name of the candidate together with documentation of his qualifications and of the recruitment effort made shall be submitted to a Qualifications Board established under section 3138 of this title. Except as provided in subsection (d) of this section, an agency may make a career appointment in the Federal Executive Service only with the prior approval of a Qualifications Board.

"(c) An agency may make a career appointment in the Federal Executive Service only by entering into an employment agreement under section 3137 of this title with the executive.

"(d) An agency may make a career appointment in the Federal Executive Service without the prior approval of a Qualifications Board when the appointment--

"(1) is by transfer from another career appointment in the Federal Executive Service; or

"(2) is by a renewal employment agreement made within 1 year after the expiration of, or the separation of an executive from, a previous employment agreement.

"§ 3137. Employment agreements

"(a) The employment agreement under which an executive first enters the Federal Executive Service is an initial employment agreement. Each employment agreement after the initial employment agreement is a renewal employment agreement.

"(b) An initial employment agreement is for an employment period of 3 years or such shorter period as is required by the mandatory separation of the executive under section 8335 of this title.

"(c) A renewal employment agreement is for an employment period of 3 years or such shorter period as is required by the mandatory separation of the executive under section 8335 of this title, except when made by reason of transfer from an initial employment agreement in which case it may run only to the date the initial employment agreement would have ended.

"(d) An initial or renewal employment agreement shall require the agency to agree--

"(1) to assign the executive only to duties and responsibilities properly within the scope and purpose of the Federal Executive Service;

"(2) to provide the executive with such training and career development activities as will enhance the proficiency of the executive and promote the program needs of the agency;

"(3) not to reduce the pay of the executive during the employment period;

"(4) not to separate the executive during the employment period, except for such cause as will promote the efficiency of the service or on the basis of a finding by the Civil Service Commission under section 8337 of this title that he has become disabled;

"(5) that the executive, at any time, may resign from the agency, transfer to employment not within the Federal Executive Service, transfer to another appointment in the Federal Executive Service in another agency, or make application for optional retirement under section 8336 of this title or disability retirement under section 8337 and, if eligible therefor, be separated; and

"(6) that on the expiration of the employment period, the agency shall enter into a renewal employment agreement with the executive, provide him with continued employment under section 3140(b) of this title, or separate him for retirement purposes under section 3140(a) of this title.

"(e) An initial or a renewal employment agreement shall require the executive to agree as follows:

"(1) to accept any assignment of duties and responsibilities, at any geographical location, that is properly within the scope, and consistent with the purposes, of the Federal Executive Service. However, if the reassignment of an executive to a different geographical location would result in undue personal hardship and the agency has no further need for his services as an executive at the place of employment, the agency shall offer him a GS-15 position at the place of employment under the same conditions set out in section 3140(b), (c) of this title and if

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the executive declines that offer he is, if otherwise eligible, entitled to a discontinued-service annuity or severance pay as provided in section 3140(d) of this title.

"(2) To participate in such training and career development activities as the agency determines will enhance his proficiency and promote the program needs of the agency.

"§ 3138. Qualifications Boards

"(a) The Civil Service Commission shall establish Qualifications Boards which, acting as agents of the Commission, shall review the qualifications of candidates for career appointment in the Federal Executive Service and the scope and nature of the recruitment effort made to locate the candidates. A Qualifications Board may approve a candidate for career appointment only when the Board determines that the recruitment effort was consistent with the principles in section 3136(a) of this title, and that the candidate is one of the most highly qualified candidates considered.

"(b) Each Qualifications Board shall be composed of highly qualified experts with the ability to judge the qualifications of the candidates reviewed. The Commission may appoint the members of a Qualifications Board from individuals both within and outside the civil service as defined by section 2101(1) of this title. A member who is an employee of an Executive agency other than the Commission may serve on a reimbursable detail under section 686 of title 31. A member selected from a State or territory or political subdivision thereof, or from the private sector, serves as an expert or consultant and his service may be obtained under section 3109 of this title at a rate of pay

not in excess of the daily equivalent that may be paid an executive under section 3139 of this title. The Commission may reimburse the government of the District of Columbia for the services of a member employed by that government.

"§ 3139. Pay

"(a) Subject to subsection (c) of this section, an agency may pay an executive any rate of annual pay it determines to be appropriate that is not less than the sixth rate of GS-15 nor more than the rate for level V of the Executive Schedule.

"(b) An agency shall establish the initial rate of pay for each executive, and adjust that rate to a higher rate at any time, in accordance with such factors as--

- "(1) the value of the executive to the agency;
- "(2) the duties and responsibilities of the executive; and
- "(3) the performance of the executive.

However, the average rate of pay of all executives within agency may not exceed the executive pay average authorized by the Civil Service Commission in collaboration with the Office of Management and Budget under subsection (c) of this section. (c) of this section, except with the prior approval of the Commission and when the Commission and the Office of Management and Budget determine that special executive staffing circumstances justify a higher average rate of pay for that agency.

"(c)(1) The Commission shall require each agency to report the rates of pay for each executive in the agency. The Commission shall establish the dollar point which, subject to sections 1308(f) and 3141 of this title, shall be authorized as the executive pay average for the next fiscal year.

"(2) The rate of pay established by an agency for an executive shall be increased automatically by the same percent of any increase in the sixth rate of GS-15 provided by or under statute that does not result in the pay of an executive being more than the rate for level V of the Executive Schedule. *revised R*

"§ 3140. Continued employment guarantees; separation benefits *proposed*

*Added
220 gm
25-26* "(a) When an employment agreement expires and an agency does not offer the executive a renewal employment agreement, or makes such an offer and it is declined by the executive, the agency may separate the executive from the service if he has completed 30 years of service as defined by section 8331(12) of this title and is otherwise eligible for an annuity under section 8336 of this title.

*Added
220 gm
25-26* "(b) When an employment agreement expires and the agency does not offer the executive a renewal employment agreement, or makes such an offer and it is declined by the executive, and the executive is not separated under subsection (a) of this section, the agency shall offer the executive a continuing position in the competitive service in GS-15 for which he is qualified and which may be filled without the displacement or reduction in grade of any employee in the agency serving in GS-15.

"(c)(1) When an executive accepts the offer required by subsection (b) of this section, previous service in GS-15 not used for step increase purposes and all service as a member of the Federal Executive Service is creditable service and shall be used in determining the step of GS-15 into which he is entitled to be placed. However, if the rate of annual pay he was receiving immediately before his employment agreement expired is greater than the basic pay the agency is required to pay him in GS-15 under this paragraph, he is

entitled to basic pay in GS-15 at the rate of annual pay he was receiving immediately before his employment agreement expired (including any increase equivalent to any statutory increase in the minimum rate of pay provided by section 3139(a) of this title) for a period of 2 years from the effective date of his appointment at grade GS-15, so long as he--

"(A) continues in the same agency without a break in service of one workday or more;

"(B) is not entitled to a higher rate of basic pay by operation of subchapter III of chapter 53 of this title; and

"(C) is not demoted or reassigned (i) for personal cause, (ii) at his request, or (iii) in a reduction in force to lack of funds or curtailment of work.

"(2) When the period of saved pay required by paragraph (1) of this subsection expires, the former executive is entitled to:

"(A) service credit for periodic step increase purposes under section 5335 of this title for previous service in GS-15 not used for step increase purposes and for all service as a member of the Federal Executive Service; and

"(B) placement in the appropriate rate and step of GS-15 on the basis of the total creditable service calculated under subparagraph (a) of this paragraph unless he is given a higher rate and step under subchapter III of chapter 53 of this title and the regulations of the Civil Service Commission prescribed pursuant thereto.

"(3) For the purpose of this subsection and section 5335(a) of this title, the work of a former executive while a member of the Federal Executive Service is deemed to have been of an acceptable level of competence, and any increase

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 in pay received on entering the Federal Executive Service, or while in the Service, is not an equivalent increase in pay.

"(d) When an employment agreement expires and an agency does not offer the executive a renewal employment agreement, an executive who declines the offer required by subsection (b) of this section is entitled to:

"(1) A discontinued service annuity under section 8336(d) of this title if he meets all requirements for title to such an annuity. Such an executive who is separated after he declines the offer required by subsection (b) of this section is deemed 'involuntarily separated from the service' for the purpose of section 8336(d) of this title.

"(2) Severance pay if he meets all requirements for severance pay under section 5595 of this title. Such an executive who is separated after his declination of the offer required by subsection (b) of this section is deemed 'involuntarily separated from the service' for the purpose of section 5595(b)(2) of this title.

"(e) When an employment agreement expires and an agency offers the executive a renewal employment agreement which he declines and, in addition, he declines the offer of a continuing position in the competitive service in GS-15, the separation of the executive from the agency is not 'involuntary' for the purpose of severance pay under section 5595(b)(1) of this title or a discontinued service annuity under section 8336(d) of this title.

"§ 3141. Report to Congress

The Civil Service Commission shall report the projected number of appointments, the ratios, and the executive pay average to be authorized, together with a full explanation thereof, to Congress in the report required by section 1308(f) of this title. The projected authorizations are effective 90 calendar days after the report is submitted to Congress.

"§ 3142. Regulations

The Civil Service Commission may prescribe regulations necessary to carry out the purposes of this subchapter, [except section 3143.]

✓
"§ 3143. Executive management outside the Federal Executive Service

"(a) The government of the District of Columbia and each agency in the judicial or legislative branch in which there are positions the basic pay for which is at an annual rate that is not less than the sixth rate of GS-15 nor more than the rate for level V of the Executive Schedule, and which is not fixed under the General Schedule in section 5332(a) of this title nor under the Executive Schedule in subchapter II of chapter 53 of this title, shall prescribe regulations which establish within the government and the agency a program of executive management as nearly like the program prescribed under this subchapter for the Federal Executive Service as conditions of good administration warrant.

"(b) The Civil Service Commission, on request, shall give advice and assistance to the government of the District of Columbia and to each agency which establishes a program of executive management under subsection (a) of this section. The assistance given by the Commission under this subsection may include the use of a Qualifications Board established under section 3138 of this title and the use of the Executive Inventory maintained in the Commission.

"(c)(1) Each hearing examiner appointed under section 3105 of this title to a position not under the General Schedule in section 5332 of this title is entitled to pay prescribed by the Civil Service Commission independently of agency recommendations or ratings in accordance with this subsection.

"(2) The Civil Service Commission shall fix the pay of a hearing examiner paid under this subsection at a rate that is not less than the sixth rate for GS-15 nor more than the rate for level V of the Executive Schedule.

"(3) The Civil Service Commission shall prescribe regulations necessary to carry out this subsection which shall include--

"(A) the bases for determining the rate of pay for each hearing examiner position based on the difficulty and responsibility of work in keeping with the purpose expressed in section 5101 of this title; and

"(B) provisions governing the rate for new appointments, the rate on change in position or type of appointment, periodic increases, and pay saving which shall be consistent with sections 5105, 5106, 5333, 5334, 5335, and 5337 of this title.

"(d) Each agency excluded by section 3132(1) of this title or which has employees excluded by section 3132(2) of this title--

✓ "(1) is encouraged to adopt such features of the program prescribed under this subchapter as conditions of good administration warrant; and

✓ "(2) is entitled, on request, to receive advice and assistance from the Civil Service Commission under subsection (b) of this section."

(4) Chapter 33 is amended--

(A) by amending section 3302--

(i) by striking out "and" at the end of paragraph (1);

(ii) by striking out the period at the end of paragraph (2)

and inserting "; and" in place thereof; and

(iii) by inserting the following new paragraph after paragraph (2):

"(3) necessary exceptions from sections 2951, 3304, 3305, 3306, 3308, 3309, 3311, 3313, 3314, 3315, 3315a, 3316, 3317, 3318, 3320, 3321, 3322, 3341, and 3361 to carry out subchapter II of chapter 31 of this title.";

(B) by striking out sections 3324 and 3325; and

(C) by amending items 3324 and 3325 in the analysis to read as follows:

* "3324. [Repealed.] *Repealed by 1974 Act, Section 101, (a) (1)*

* "3325. [Repealed.]" *Repealed by 1974 Act, Section 101, (a) (1)*

(5) Section 4301(2) is amended--

(A) by striking "or" after subparagraph (D);

(B) by striking the period after subparagraph (E) and inserting
"; or" in place thereof; and

(C) by inserting the following new subparagraph after subparagraph
(E):

"(F) a member of the Federal Executive or an employee under
an agency program of executive management established under
section 3143(a) of this title."

(6) Chapter 51 is amended-- *Chapter 51, Title 5, U.S.C.*

(A) by amending section 5102(c)(25) to read as follows:

"(25) positions for which rates of basic pay are individually
fixed, or expressly authorized to be fixed, by a statute other than
this chapter, at or in excess of the maximum rate for GS-15;"

(B) by amending section 5104--

(i) by striking out "18" immediately before the words
"grades of difficulty" and inserting "15" in place thereof; and

(ii) by striking out paragraphs (16), (17), and (18);

* (C) by striking out section 5108; *Section 5108, Title 5, U.S.C.*

(D) by amending section 5109--

(i) by striking out the subsection designation "(a)"; and

(ii) by striking out subsection (b);

* (E) by striking out section 5114; *reports to CSC on allocated positions 16-18.*
(F) by amending items 5108 and 5114 in the analysis to read as

follows:

5108 "5108. [Repealed.]".

"5114. [Repealed.]"; and

(G) by amending section 5115 by striking out "sections 5109 and 5114" and inserting "section 5109" in place thereof.

(7) Chapter 53 is amended--

(A) by amending section 5304 by striking out "chapter 51 of this title" and inserting "chapter 51 and subchapter II of chapter 31 of this title" in place thereof;

(B) by amending section 5332 by striking out the references therein to GS-16, 17, and 18 and the annual rates for those grades;

* (C) by striking out section 5361; *16-18 for scientific & professional*

(D) by amending section 5362 by inserting "to positions paid under the General Schedule in section 5332 of this title" immediately after "3105 of this title";

(E) by amending section 5363 by striking out "for GS-18" and inserting "that may be paid under section 3139 of this title" in place thereof;

(F) by amending section 5364 by striking out "equal to the pay rate of a grade and step of the General Schedule set forth in section 5332 of this title" and inserting "that is not more than the maximum rate that may be paid under section 3139 of this title" in place thereof; and

(G) by amending item 5361 in the analysis to read as follows:
"5361. [Repealed.]".

(8) Section 5595(a)(2) is amended--

(A) by amending clause (i) by striking out "for GS-18" and inserting "that may be paid under section 3139 of this title" in place thereof; and

(B) by amending clause (ii) by inserting "or a member of the Federal Executive Service" immediately before the semicolon.

(9) Section 7154 is amended by --

(A) inserting "subchapter II or chapter 31," immediately after "In the administration of"; and

(B) striking out "sections 305 and 3324" and inserting "section 305" in place thereof.

(10)(A) Chapter 77 is amended by inserting the following new section after section 7701:

"§ 7702. Appeals of members of the Federal Executive Service and others

"(a) A member of the Federal Executive Service given a career appointment under section 3136 of this title, and an employee under a regulatory program of executive management established under section 3143(a) of this title who has a tenure equivalent to a career executive appointed under section 3136 of this title, is entitled to appeal to the Civil Service

Commission if he believes his employing agency or the government of the District of Columbia has violated the employment agreement under which he is serving. The executive or employee shall submit the appeal in writing within a reasonable time after the alleged violation of the employment agreement occurs, and is entitled to appeal personally or through a representative under regulations prescribed by the Commission. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the employing agency or the government of the District of Columbia and shall send copies thereof to the executive or employee and his representative. The agency or the government shall take the corrective action that the Commission finally recommends.

"(b) The Civil Service Commission may prescribe regulations necessary to carry out this section."

(B) The analysis of chapter 77 is amended by inserting the following new item after item 7701:

"7702. Appeals of members of the Federal Executive Service and others."

SEC. 2. (a)(1) An employee who immediately before the effective date of this Act was serving under a career or career-conditional appointment in a position in the competitive service in GS-16, 17, or 18, or who was paid at a rate of GS-16, 17, or 18, or whose pay was fixed by administrative action (at) between the first rate of GS-16 and GS-18, inclusive, and who is not excluded from subchapter II of chapter 31 of title 5, United States Code, by section 3132 of that title, is, at his election, entitled to either--

(A) enter into an initial employment agreement under section 3137 of title 5 with, and receive a career appointment in the Federal Executive Service in, his employing agency without a review of his qualifications, or the approval of his career appointment, by a Qualifications Board; or

(B) continue under the appointment held immediately before the effective date of this Act.

(2)(A) An employee who immediately before the effective date of this Act was serving in GS-16, 17, or 18 under an excepted appointment in a position in Schedule C of Subpart C or Part 213 of Title 5 of the Code of Federal Regulations or in a position filled by noncareer executive assignment under Subpart F of Part 305 of Title 5 of the Code of Federal Regulations, and who is not excluded from subchapter II of chapter 31 of title 5, United States Code, by section 3132 of that title, is entitled to a noncareer appointment.

(B) An excepted employee, other than one covered by subparagraph (A) of this paragraph, who immediately before the effective date of this Act, was serving in GS-16, 17, or 18, or who was paid at a rate of GS-16, 17, or 18, or whose pay was fixed by administrative action between the first rate of GS-16 and GS-18, inclusive, at the election of his employing agency may enter into an initial employment agreement under section 3137 of title 5 with, and receive a career appointment in, his employing agency, without a review of his qualifications, or the approval of his career appointment by, a Qualifications Board. If an agency does not elect to offer the employee a career appointment, or if the employee declines to accept such an appointment, the agency shall allow the employee to continue to serve under the excepted appointment held immediately before the effective date of this Act without change in tenure or the loss of any employment or job-protection benefits.

(3) The Civil Service Commission may prescribe regulations to carry out the purpose of this subsection. The regulations shall provide a right of appeal to the Commission for an employee who believes his employing agency has violated his rights under this subsection. An agency shall take the corrective action that the Commission finally recommends in its decision on an appeal under this subsection.

(b)(1) This subsection applies to positions that were in or paid at a rate of, GS-16, 17, or 18, or the pay for which was fixed by administrative action between the first rate of GS-16 and GS-18, inclusive, immediately prior to the effective date of this Act, the incumbents of which are neither in the Federal Executive Service nor under an agency program of executive management under section 3143 of title 5, United States Code.

(2)(A) On and after the effective date of this Act each agency with authority to fix the pay of a position by administrative action between the first rate of GS-16 and GS-18, inclusive, immediately prior to the effective date of this Act may continue to fix the pay for such a position between the first rate of Grade 16 and Grade 18, inclusive, of the grade schedule in paragraph (3) of this subsection.

(B) On and after the effective date of this Act the Director of the Federal Bureau of Investigation, without regard to any other provision of this Act or other statute, may fix the pay of not to exceed 140 positions in the Federal Bureau of Investigation at any rate of annual pay he determines to be appropriate that is not less than the sixth rate of GS-15 nor more than the rate for level V of the Executive Schedule.

(3)(A) On and after the effective date of this Act the following grade schedule applies to the positions to which this subsection applies, except as provided under paragraph (2) of this subsection:

Grade	Annual rates and steps								
	1	2	3	4	5	6	7	8	9
16	\$28,129	29,067	30,005	30,943	31,881	32,819	33,757	34,695	35,633
17	32,546	33,631	34,716	35,801	36,886*				
18	37,624*								

*The rate of basic pay for employees at these rates is limited by section 5308 of title 5 of the United States Code, as added by the Federal Pay Comparability Act of 1970, to the rate for level V of the Executive Schedule (as of the date of this salary adjustment, \$36,000).

(B) The Civil Service Commission shall prescribe regulations necessary to carry out this subsection which shall include provisions governing the rate on change in position or type of appointment, periodic and additional step increases, and pay saving which shall be consistent with sections 5105, 5106, 5334, 5335, 5336, and 5337 of title 5, United States Code.

SEC. 3. (a)(1) Each position in or paid at a rate of, GS-16, 17, or 18, ~~or~~ the pay for which was fixed by administrative action between the first rate of GS-16 and GS-18, inclusive, immediately before the effective date of this Act is authorized to be continued and to be paid under section 2(b) of this Act until brought into the Federal Executive Service under section 1 or 2 of this Act or into an agency program of executive management under section 3143 of title 5, United States Code. On and after the effective date of this Act, this subsection constitutes the only authority for continuing a position covered by this section and all authorities for those positions that existed immediately before the effective date of this Act are repealed, including but not limited to section 1581 of title 10, United States Code; section 208(g) of the Public Health Service Act, as added by the Act of August 15, 1950, 64 Stat. 447, as amended, section 210(g) of title 42, United States Code, except the reference therein to positions in

level II of the Executive Schedule; section 601 of the Supplemental Defense Appropriation Act, 1958, 72 Stat. 8, as amended; and section 302(f) of the Federal Aviation Act of 1958, 72 Stat. 746, as amended, section 1343(d) of title 49, United States Code.

(2) This subsection does not apply to the Federal Bureau of Investigation or the administrative pay-fixing authority provided the Director of that Bureau under section 2(b)(2)(B) of this Act.

(b) Each agency in the executive, judicial, or legislative branch shall make a report to the Civil Service Commission, at such time and in such form as the Commission prescribes, concerning each position in, or paid at a rate of, Grade 16, 17, or 18, or the pay for which is fixed by administrative action between the first rate of Grade 16 and Grade 18, inclusive, which has not been brought into the Federal Executive Service or into an agency program of executive management, including a statement of the authority that existed for each such position immediately before the effective date of this Act. X7

SEC. 4. The enactment of this Act does not decrease the pay, allowances, compensation, or annuity of any person.

SEC. 5. If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

SEC. 6. (a) Except as provided in subsection (b) of this section, this Act shall take effect at the start of the first fiscal year that begins 270 days following the date of enactment.

(b) Section 1(2) of this Act which requires a stewardship report to Congress by the Civil Service Commission, and those parts of section 1(3) of this Act which refer to the stewardship report by the Commission (5 U.S.C. 3141) and require a like report for the government of the District of Columbia and each agency which establishes a regulatory program of executive management (5 U.S.C. 3143), shall take effect 90 days before the start of the first fiscal year that begins 270 days following the date of enactment.